UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

WILLIAM McGEE and SCOTT : CASE NO.

JENSEN, as Trustees of the

INSULATORS LOCAL NO. 23

PENSION FUND, INSULATORS : Electronically Filed

LOCAL NO. 23 ANNUITY FUND :

and INSULATORS LOCAL NO. 23 : HEALTH AND WELFARE FUND, :

Plaintiffs

V.

.

LOSHAW THERMAL :

TECHNOLOGY, LLC

59 North Main Street : Spring Grove, PA 17362-1013 :

Defendant

COMPLAINT

- 1. This Court has jurisdiction over the subject matter of this action under 29 U.S.C. §§1132 and 1145, 29 U.S.C. §185(a), and/or 28 U.S.C. §1331. The claims asserted herein are all made under federal statutes or federal common law, but the supplemental jurisdiction of the Court under 28 U.S.C. §1367(a) also extends to any claims that are found to lie under state law.
- 2. Venue lies in this District under 29 U.S.C. §1132(e)(2), 29 U.S.C. §185(a) and/or 28 U.S.C. §1391(b).

- 3. Plaintiff, Insulators Local No. 23 Pension Fund (hereinafter the "Pension Fund") is a trust fund established under 29 U.S.C. §186(c)(5). Its Trustees are the "named fiduciary," "plan administrator" and "plan sponsor," and each is an individual "fiduciary" within the meaning of 29 U.S.C. §§1102(a) and 1002(16) and (21).
- 4. The Pension Fund is a "multiemployer plan," "employee benefit plan" and "employee benefit pension plan" within the meaning of 29 U.S.C. §1002(37), (2) and (3), which is administered and has its principal place of business in this District at % PATH Administrators, 4785 Linglestown Road, Suite 200, P. O. Box 6480, Harrisburg, PA, 17112-0480.
- 5. Plaintiff, Insulators Local No. 23 Annuity Fund (hereinafter the "Annuity Fund") is a trust fund established under 29 U.S.C. §186(c)(5). Its Trustees are the "named fiduciary," "plan administrator" and "plan sponsor," and each is an individual "fiduciary" within the meaning of 29 U.S.C. §§1102(a) and 1002(16) and (21).
- 6. The Annuity Fund is a "multiemployer plan," "employee benefit plan" and "employee benefit pension plan" within the meaning of 29 U.S.C. §1002(37), (2) and (3), which is administered and has its principal place of business in this

District at % PATH Administrators, 4785 Linglestown Road, Suite 200, P. O. Box 6480, Harrisburg, PA, 17112-0480.

- 7. Plaintiff, Insulators Local No. 23 Health and Welfare Fund (hereinafter the "Health and Welfare Fund") is a trust fund established under 29 U.S.C. §186(c)(5). Its Trustees are the "named fiduciary," "plan administrator" and "plan sponsor," and each is an individual "fiduciary" within the meaning of 29 U.S.C. §§1102(a) and 1002(16) and (21).
- 8. The Health and Welfare Fund is a "multiemployer plan," "employee benefit plan" and "employee welfare benefit plan" within the meaning of 29 U.S.C. §1002(37), (1) and (3), which is administered and has its principal place of business in this District at % PATH Administrators, 4785 Linglestown Road, Suite 200, P. O. Box 6480, Harrisburg, PA, 17112-0480.
- 9. The Pension Fund, Annuity Fund and Health and Welfare Fund are hereinafter jointly or severally referred to as "the Funds" or "ERISA Funds."
- 10. Plaintiffs William McGee and Scott Jensen (who, together with the Funds, are collectively referred to herein as "Plaintiffs"), are fiduciaries of the Funds within the meaning of 29 U.S.C. §1002(21) with respect to the collection of contributions due the Funds and related matters, have a business address at the ad-

dresses for the Funds listed herein, and are authorized to bring this action on behalf of all Trustees of the Funds as organizations.

- 11. Defendant, Loshaw Thermal Technology, LLC (hereinafter "Loshaw"), is an employer in an industry affecting commerce within the meaning of 29 U.S.C. §152(2), (6) and (7) and 1002(5), (11) and (12), with a business office at the address listed in the caption. Loshaw does business with the Funds that is sufficient to create personal jurisdiction over Loshaw in this District and a substantial part of the events or omissions giving rise to the claims herein occurred from transactions with the Funds' office in this District.
- 12. At all times relevant to this action, Loshaw was party to or agreed to abide by the terms and conditions of a collective bargaining agreement (hereinafter the "Agreement") between Insulators and Allied Workers Local Union No. 23 and Pennsylvania Insulation Contractors Association.
- 13. International Association of Heat and Frost Insulators and Allied Workers Local No. 23 ("Local 23"), is an "employee organization" within the meaning of Section 3(4) of ERISA, 29 U.S.C. §1002(4).
- 14. Loshaw is subject to and has agreed to abide by the terms of the Amended and Restated Agreements and Declarations of Trust of the Funds (singly or jointly referred to herein as the "Trust Agreements"), made between certain em-

ployers and employee representatives in an industry(ies) affecting interstate commerce to promote stable and peaceful labor relations, and the plan documents for the ERISA Funds.

- 15. Under the Agreement, Trust Agreements, plan documents of the ERISA Funds and/or other documents, Loshaw agreed:
 - a. To make full and timely payment on a monthly basis, on or before the 10th day of each month, to the Funds as required by the Trust Agreements and plan documents;
 - b. To file monthly remittance reports with the Funds detailing all employees or work for which contributions were required under the Agreement;
 - c. To pay liquidated damages in the amount of Fifteen (15%) Percent of the delinquent amount; interest at the rate of One (1%) Percent of the delinquent amount per month; and all costs of litigation, including attorneys' fees, expended by the Funds to collect any amounts due as a consequence of Loshaw's failure to comply with its contractual and statutory obligations described in Subparagraphs (a) and (b), above.
- 16. For the work months of August, September, October, November and December, 2011, Loshaw submitted Monthly Contribution Report Forms to the

Funds reflecting the total hours worked by its employees. Attached hereto as "Exhibit A" and incorporated herein by reference are copies of the Monthly Contribution Report Forms for August, September, October, November and December, 2011.

- 17. The Monthly Contribution Report Forms submitted by Loshaw covering the period of August through December, 2011, reflected a total of 824 hours worked by Loshaw employees.
- 18. During the period from July, 2015 to September, 2015, the Funds received information and records from Local 23 reflecting hours worked by employees of Loshaw during 2011 that were not reported to the Funds on the Monthly Contribution Report Forms which are attached hereto as "Exhibit A."
- 19. The records provided to the Funds were prepared by Loshaw and submitted to Local 23. The records prepared by and submitted by Loshaw to Local 23 reflected a total of 2,973 hours worked by Loshaw employees during 2011. Based on the information and records provided by Local 23 to the Funds, the Funds have determined that Loshaw failed to pay contributions to the Funds for 2,149 hours worked by its employees during 2011.
- 20. The ERISA Funds are adversely affected and damaged by Loshaw's violation of 29 U.S.C. §1145.

WHEREFORE, Plaintiffs demand judgment against Loshaw as follows:

- a. For contributions due to the Funds for the period of January 1,2011 through December 31, 2011, plus any additional contributions duesince the filing of this action;
- b. For liquidated damages and interest due on account of the untimely payment of contributions for the period of January 1, 2011 through December 31, 2011, plus any additional liquidated damages and interest due since the filing of this suit;
- c. For costs incurred in this action or the collection or enforcement of any judgment as provided under the Trust Agreements, plan documents of the ERISA funds and 29 U.S.C. §1132(g)(2), including filing fees in the amount of \$400.00, and service fees in the amount of \$137.50; and
 - d. For reasonable attorneys' fees incurred in this action; and
- e. For such other legal or equitable relief as the Court deems appropriate.

Respectfully submitted, CHARLES W. JOHNSTON, P.C. 101 Erford Road, Suite 302 Post Office Box 98 Camp Hill, Pennsylvania 17001-0098 Telephone: (717) 975-5500 Facsimile: (717) 975-5511

/s/ CHARLES W. JOHNSTON
Pa. I.D. No. 15621
e-mail: cjohnston@jadlegal.com

Attorneys for Plaintiffs

Dated: September 29, 2015

EXHIBIT A

Send Additional Forms

Final Report

MAKE CHECKS PAYABLE TO:

INSULATORS LOCAL NO. 23 CONTRIBUTION FUND

c/o D. H Evans Associates, Inc. P.O. Box 6480, Harrisburg, PA 17112 Phone: (717) 671-8551

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|--|--|--|---|--|--|---|
| Contractor: LOSHAW TH | erm. | AL TECHN | CLOGY | 166 | Month: ½ | lugust ac |
| Street: 59 North MA | in S | f | | Payroll P | eriod Ending: | 8-35-11 |
| City: Spring Grove | | State: | PA | Zip: 1736. | (Must Include | last full pay period) |
| Telephone Number: | 27. | 7 9 00 | Federa | al ID# <u>37~</u> | 474657 | 2 |
| | | | | Health & Welfare Hours Paid | Pension Hours Paid | Annuity Hours Paid |
| Employee Name | Local No. | Social Security Number | Total Hours - Worked | | Mechanics 3rd - 5th Year Apprentices Applicant Mechanic Member Only | Mechanics 3 nd - 5th Year Apprentices Applicant Mechanic Member Only |
| Logan Bittner | 23 | | 24 | 24 | 24 | 04 |
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| Health & Welfare Fund: | | \$ 7.95 | per hour | s naid \$ | 502.40 | |
| Pension Fund: | | \$ 4.00 | per hour | • | 576.00 | |
| Annuity Fund: | | \$ 3.75 | per hour | | 340,00 | |
| Union Dues: | | \$ 4,00 | per hour | | 256,00 | |
| Vacation Fund: | | \$ 1,00 | per hour | s worked \$ | 64,00 | |
| Apprentice Fund: | | \$,71 | per hour | s worked \$ | 45.44 | |
| PAG Fund: | Emp | oloyee (Also i | ncludes the | \$.05 for the Nat | ional Apprentice | Fund) |
| PAC Fund: | | 8-1-14-7- | per hour | s-worked \$ | 20 27 8 p. 96 | emilia Popular |
| Labor Management Cooperative Tr | ust: | \$.05 | _ per hours | s worked \$ | 3.20 | |
| Total This Check; | | | • | \$ | 1,696. |) <i>0</i> |
| INSTRUCTIONS: Remittance should be covers. Retain the last copy for employe | sent no | later than tenth (1) and mail all other co | Oth) day of opies to above | f the month follow e address. | ring the close of th | e month report |
| I certify that this report is a true and corr for this reported period. I also certify tha from the employees' gross wages. | ect staten t all taxe | nent of the days and s due on amounts wi | hours worke thheld for Va | ed by all Members acation Savings F | for whom contribund have been paid | ations are due I or withheld |
| The undersigned Employer hereby agree in the presently existing collective barga Insulators affiliated with Local # 23. The establishing the Insulators Local # 23 He amended. The undersigned affirms that he Employer. | s to be bo ining agr undersignalth and se is auth | ound by the terms are eement entered into ened Employer also Welfare, Pension an orized to execute thi | d conditions between the agrees to be d Annuity Fi s document i | pertaining to fring Insulators Local U bound by the prov ands as presently of for and on behalf of | ge benefit contribu Inion # 23 and Firs isions of the Trust constituted and as I of the above contri | tions contained ns employing Agreement lereinafter buting |
| Signature & Title: | 11. 53. | 4 | €.0. | Date: _ | 9-1-11 | |

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| Send | Additional | Forms | V |

MAKE CHECKS PAYABLE TO:

INSULATORS LOCAL NO. 23 CONTRIBUTION FUND

c/o D. H Evans Associates, Inc. P.O. Box 6480, Harrisburg, PA 17112 Phone: (717) 671-8551

| Street: 59 North M | airi | 31. | James | | Period Ending: | last full pay period) |
|--|--|--------------------|--------------------------|-----------------------------------|--|--|
| City: Spring Grave | <u>. </u> | State: | PA_ | Zip: / 7.34 | <u>. 3</u> | |
| Telephone Number: 717-3 | 29- | 9900 | Feder | al ID# 27- | 4746578 | 1 |
| | | | | Health & Welfare Hours Paid | Pension Hours Paid | Annuity Hours Paid |
| Employee Name | Local No. | Social Security | Total Hours Worked | 444 | Mechanics 3 rd - 5th Year Apprentices Applicant Mechanics Member Only | Mechanics 3 rd - 5th Year Apprentices Applicant Mechanic Member Only |
| Shawn E. Bittner | 33 | | 88 | 88 | 28 | 88 |
| Logan D. Bittner | 23 : | | 96 | 96 | 96 | 96 |
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| eget to the contract of the co | | | | • | : :: | |
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| Health & Welfare Fund: | | s 7.85 | per hour | s paid \$ | 1,444,48 | |
| Pension Fund: | | \$ 4.00 | _ per hour | • | 1.656 | |
| Annuity Fund: | | \$ 3.75 | per hour | - | <u>690</u> | |
| Union Dues: | | \$ 4.00 | _ per hour | • | 736 | |
| Vacation Fund: Apprentice Fund: | - ' | \$ 1,00 \$ 71 | _ * | s worked \$ s worked \$. | 130.64 | ſ |
| Employer and | Eme | | * · | \$ 05 for the Na | | |
| PAC Fund: | | \$ 14 | | s worked \$ | 25.76 | A CONTRACTOR OF THE PARTY OF TH |
| Labor Management Cooperative Tr | ust: | \$ 05 | | s worked \$ | 4.30 | |
| Total This Check: | | | • | \$ | 4,876.0 | 00 |
| NSTRUCTIONS: Remittance should be overs. Retain the last copy for employer | sent no l | ater than tenth (1 | Oth) day o | f the month follow | wing the close of the | e month report |

The undersigned Employer hereby agrees to be bound by the terms and conditions pertaining to fringe benefit contributions contained in the presently existing collective bargaining agreement entered into between the Insulators Local Union # 23 and Firms employing Insulators affiliated with Local # 23. The undersigned Employer also agrees to be bound by the provisions of the Trust Agreement establishing the Insulators Local # 23 Health and Welfare, Pension and Annuity Funds as presently constituted and as hereinafter amended. The undersigned affirms that he is authorized to execute this document for and on behalf of the above contributing Employer.

| Signature & Title; | Wena | Bel. 1 | 3 | CIE.O. | Date: | 10-5-11 | |
|--------------------|------|--------|------|--------|-------|---------|--|
| _ | 12 | 7 | W.F. | 753 | | | |

| Send Additional Forms | |
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MAKE CHECKS PAYABLE TO:

INSULATORS LOCAL NO. 23 CONTRIBUTION FUND

| City: Spring Grove | | State: | PA | Zip: 1736 | , | last full pay perio |
|--|---------------------------------------|---|---|---|--|--|
| Telephone Number: | 34.4 | 44.00 | Federa | Health & Welfare Hours Paid | Pension Hours Paid | Annuity Hours Pai |
| Employee Name | Local No. | Social Security Number | Total Hours Worked | House and | Mechanics 3rd - 5th Year Apprentices Applicant Mechanic - Merabon Only | Mechanics 3 rd - 5th Yea Apprentices Applicant Mech |
| Logan D. Bittner | 33. | | 116 | 116 | 116 | 116 |
| Shown E. Bittner | 23 | | 140 | 140 | 140 | 140 |
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| Health & Welfare Fund: Pension Fund: | | \$ 9.00 | _ per hour per hour | - | 2304 | • |
| Annuity Fund: | | • • • • • • • • • • • • • • • • • • • | per hour | - | 960 | |
| Union Dues: | | \$ 4,60 | per hour | - | 1024 | • |
| Vacation Fund: | | \$ 1.00 | | s worked \$ | 356 | |
| Apprentice Fund: | . • | \$ 771 | _ • | s worked \$ | 1 8 1 71. | |
| Binployer and | Emr | oleyee (Also i | - | | ional Apprentice | Fund) |
| PAC Fund: | | | | | 35: 84 | |
| Labor Management Cooperative Tr | | S OF | | s worked \$ | 13.80 | |
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| Total This Check: | | | | · S | 6.184. | • |
| INSTRUCTIONS: Remittance should be covers. Retain the last copy for employed certify that this report is a true and correct this reported period. I also certify that from the employees' gross wages. The undersigned Employer hereby agree in the presently existing collective bargainsulators affiliated with Local #23. The establishing the Insulators Local #23 Heamended. The undersigned affirms that he | r records ect stater t all taxe | and mail all other co ment of the days and as due on amounts wi | pies to abov hours works thheld for V | ve address. ed by all Members acation Savings F | for whom contrib and have been paid | utions are due d or withheld |

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| Send | Additional | Forms | □ |

MAKE CHECKS PAYABLE TO:

OSHAW THERMAL TECHNOLOGY,

INSULATORS LOCAL NO. 23 CONTRIBUTION FUND

c/o D. H Evans Associates, Inc. P.O. Box 6480, Harrisburg, PA 17112 Phone: (717) 671-8551

| Street: 59 North | Mai | n St. | · · | Payroll I | eriod Ending: | 1-27-1 |
|--|----------------------------------|--|---|--|---|--|
| City: Spring Grov | e | State: | PA_ | Zip: 1736 | (Must Include | last full pay period) |
| Telephone Number: 7/7-2 | - P.6 | 9900 | Federa | al ID# <u>37-</u> | 474657 | a |
| · | | | | Health & Welfare Hours Paid | Pension Hours Paid | Annuity Hours Paid |
| Employee Name | Local No. | Social Security Number | Total Hours - Worked | and the same of th | Mechanics 3 rd - 5th Year Apprentices Applicant Mechanic Member Only | Mechanics 3 rd - 5th Year Apprentices Applicant Mechani Member Only |
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| Logan D. Bittner | 331 | | 96 | 96 | 96 | 96 |
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| Health & Welfare Fund: | | s *7. 35 | per hours | s naid \$ | 1.507.20 | 4 |
| Pension Fund: | | \$ 9.00 | per hours | - | 1739 | |
| Annuity Fund: | -24 | s 7.75 | per hours | | 730. | • |
| Union Dues: | | \$ 4.00 | per hours | - | 768 | · . |
| Vacation Fund: | : 12 | \$ 1.00 | per hours | - | 193. | |
| Apprentice Fund: | | \$.71 | per hours | | 176.3 | 3 |
| Employer and | Z. Emp | loyee (Also i | | \$.05 for the Na | tional Apprentice | Fund) |
| PAC Fund: | Section 1 | \$ 14 | per hours | | 26.2 | P |
| Labor Management Cooperative Tr | rust: | \$.05 | per hours | worked \$ | 9.60 | |
| Total This Check: | 1 | | - ; | \$ | 5,038 | |
| INSTRUCTIONS: Remittance should be covers. Retain the last copy for employer | e sent no r records | later than tenth (1) and mail all other co | Oth) day of opies to above | the month followed address. | wing the close of th | e month report |
| I certify that this report is a true and corr for this reported period. I also certify tha from the employees' gross wages. | ect staten | nent of the days and s due on amounts wi | hours worke thheld for Va | d by all Member acation Savings I | s for whom contrib und have been paid | utions are due d or withheld |
| The undersigned Employer hereby agree in the presently existing collective barga Insulators affiliated with Local #23. The establishing the Insulators Local #23 He amended. The undersigned affirms that hemployer. | ining agr undersi alth and | eement entered into gned Employer also Welfare, Pension an | between the agrees to be l d Annuity Fu | Insulators Local bound by the pro ands as presently | Union # 23 and Fin visions of the Trust constituted and as l | ms employing Agreement hereinafter |

Signature & Title:

| | • | |
|------|------------------|--|
| Send | Additional Forms | |

MAKE CHECKS PAYABLE TO:

INSULATORS LOCAL NO. 23 CONTRIBUTION FUND

c/o D. H Evans Associates, Inc. P.O. Box 6480, Harrisburg, PA 17112 Phone: (717) 671-8551

| Contractor: LOSHAW T | her | mol Tec | hnol | ogy, LI | Month: | Decembe |
|---------------------------------|--------------|------------------------|----------------------------|---|---|--|
| Street: 51 North | W/5 | am at. | | F 17 17 17 17 17 17 17 17 17 17 17 17 17 | eriod Ending:(Must Include | last full pay period) |
| City: Spring Grove | 3 | State: | M | Zip: 1736 | a / | |
| Telephone Number: 777 | 4 - 9 | 9900 | Feder | al ID# <u>27-64</u> | 744572 | |
| | | | | Health & Welfare Hours Paid | Pension Hours Paid | Annuity Hours Paid |
| Employee Name | Local No. | Social Security Number | Total Hours - Worked | and the same of | Mechanics 3 rd - 5th Year Apprentices Applicant Mechanic | Mechanics 3 ^M - 5th Year Apprentices Applicant Mechanic Member Only |
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| Logan D. Bittner | 23 | | 64 | LOY | (p4 | 64 |
| Shawn E. Bittner | . 33 | | 64 | 64 | 604 | 64 |
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| Health & Welfare Fund: | | s 7.85 | per hour | s paid \$ | 1004.80 |) |
| Pension Fund: | | \$ 9.00 | per hour | s paid \$ | 1152.00 |) |
| Annuity Fund: | | \$ 3.75 | per hour | s paid \$] | 480,00 | f |
| Union Dues: | | \$ 4.00 | _ per hour | • | 512.00 | |
| Vacation Fund: | | \$ 1,00 | - | s worked \$ | 7,28,00 | \ |
| Apprentice Fund: | V1 | \$.71 | * | s worked \$ | 90, 83 | ! : |
| Employer and | Emp | | | \$.05 for the Nat | ional Apprentice | Fund) |
| PAC Fund: | | \$ | _ • | worked \$ | 7,4 | |
| Labor Management Cooperative Tr | rust: | \$\$ | _ per hour | s worked \$ | 10.40 | |
| Total This Check: | | | | \$ | 3.392.0 | O |

I certify that this report is a true and correct statement of the days and hours worked by all Members for whom contributions are due for this reported period. I also certify that all taxes due on amounts withheld for Vacation Savings Fund have been paid or withheld from the employees' gross wages.

The undersigned Employer hereby agrees to be bound by the terms and conditions pertaining to fringe benefit contributions contained in the presently existing collective bargaining agreement entered into between the Therefore Local Union #23 and Firms employing Insulators affiliated with Local #23. The undersigned Employer also agrees to be hound by the provisions of the Trust Agreement establishing the Insulators Local #23. Health and Welfare, Pension and Annuity Funds as presently constituted and as hereinafter amended. The undersigned affirms that he is authorized to execute this document for and on behalf of the above contributing Employer.

| Signature & Title: | Wend | M. R | the | C.E.O. | Date: | 1-9-12 |
|--------------------|------|---------|-----|--------|-------|--------|
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